

APPENDIX B

SECTION 7 CONSULTATION LETTERS AND RESPONSE

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United States Department of Agriculture



Natural Resources Conservation Service
540 West Price River Drive
Price, UT 84501
(435) 637-0041

April 25, 2005

Mr. Henry Maddux
U.S. Fish and Wildlife Service
2369 West Orton Circle, Suite 50
West Valley City, UT 84119-7679

RE: Coal Creek Parkway Improvement

Dear Mr. Maddux:

This is a formal request for information regarding sensitive species, as well as any designated sensitive or critical habitat areas, within or near the Coal Creek Flood Control and Parkway Improvement Project, which occurs in Iron County (see enclosed figure).

Coal Creek flows from Cedar Canyon, located southeast of and adjacent to the town of Cedar City, Utah. It is a desert stream characterized by annual perennial flow ranging from 5 to 10 cubic feet per second (cfs) and typical peak flow ranging from 100 to 140 cfs. However, as often occurs in such flashy systems, heavy spring thunderstorms, often combined with snowmelt, can result in extremely high flow. One recorded event resulted in a measured flow of 4,600 cfs. These extreme flood events pose a hazard to both property and lives in Cedar City.

Cedar City proposes to modify portions of the channel's cross-section to the northeast of Center Street and stabilize eroded, vertical stream banks that occur southeast of Center Street to accommodate these extreme events. Channel modifications would allow the FEMA 100-year floodplain to be confined to the Coal Creek channel, thereby protecting surrounding residential and business development. As part of the flood control measures anticipated for this project, Cedar City proposes to modify or relocate the existing irrigation diversion structure just west of the Main Street Bridge to alleviate sedimentation and channel capacity issues. Cedar City also proposes to improve and expand an existing parkway and trail system along Coal Creek to enhance aesthetic values and provide recreational opportunities for community residents and visitors.

The Natural Resources Conservation Service (NRCS) has received a Congressional earmark to assist Cedar City in developing and implementing project alternatives. NRCS has contracted with SWCA to prepare an Environmental Impact Statement for this project.

The Natural Resources Conservation Service provides leadership in a partnership effort to help people conserve, maintain, and improve our natural resources and environment.

An Equal Opportunity Provider and Employer

Mr. Henry Maddux
April 25, 2005

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If you have any questions or need additional information, please contact Thomas Sharp, SWCA, at (801) 322-4307 or Karen Fullen, NRCS, at (801) 524-4566.

Sincerely,

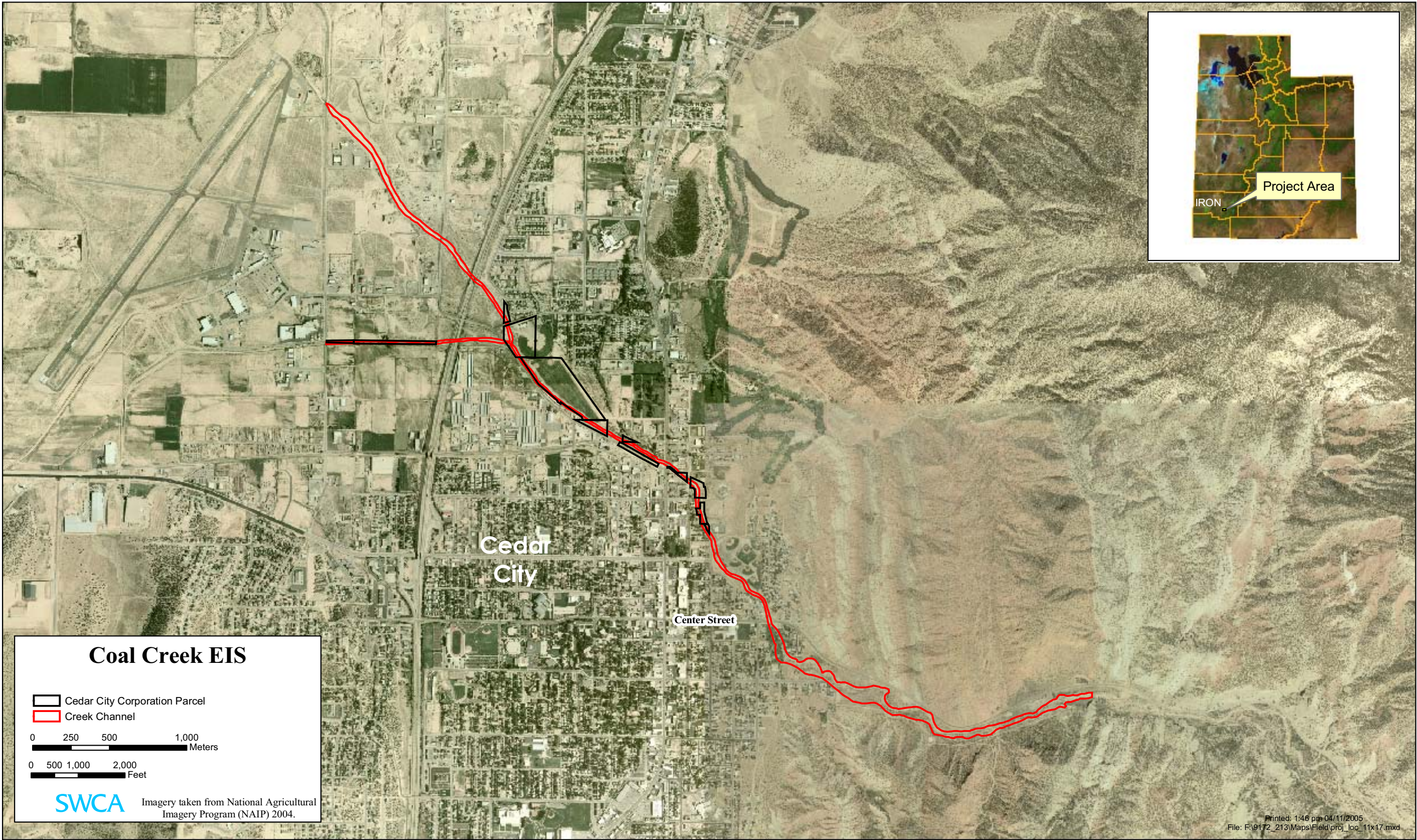
KAREN L. FULLEN
Wildlife Biologist

Enclosure

cc

Sylvia Gillen, State Conservationist, NRCS, Salt Lake City, UT
Lisa Coverdale, Assistant State Conservationist – Programs, NRCS, Salt Lake City, UT
Vane Campbell, Assistant State Conservationist – Field Operations, NRCS, Richfield, UT
Lynn Kitchen, District Conservationist, NRCS, Beaver, UT
Thomas Sharp, SWCA, Salt Lake City, UT

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

UTAH FIELD OFFICE
2369 WEST ORTON CIRCLE, SUITE 50
WEST VALLEY CITY, UTAH 84119

In Reply Refer To

FWS/R6

ES/UT

05-0744

September 14, 2005

Karen Fullen, Wildlife Biologist
Natural Resources Conservation Service
125 South State Street Room 4202
Salt Lake City, Utah 84138-1100

RE: Species List for the Proposed Coal Creek Flood Control and Parkway Improvement Project, Iron County, Utah.

Dear Ms. Fullen:

I apologize for this late response to your letter dated April 25, 2005 requesting a list of federally listed and candidate species and designated or proposed critical habitat potentially affected by the proposed modifications to portions of Coal Creek as it flows through the town of Cedar City in Iron County, Utah.

It is our understanding that the proposed project would involve modification of the channel cross sections to the northeast of Center Street and the stabilization of eroded, vertical banks that occur southeast of Center Street to better accommodate high flow events in the future. The project also entails modification or relocation of an existing irrigation diversion structure to alleviate sedimentation and channel capacity constraints at that site. Channel modifications would allow the FEMA 100-year floodplain to be confined within the redesigned Coal Creek channel.

Our data and conversations with Utah Division of Wildlife Resources biologists (Keith Day and Mike Ottenbacher; phone conversations, September 12, 2005) indicate that the following species and critical habitat may occur in the project area:

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Bald Eagle ¹	<i>Haliaeetus leucocephalus</i>	T
Utah Prairie Dog	<i>Cynomys parvidens</i>	T

Wintering populations (only eight known nesting pairs in Utah).

The proposed action should be reviewed and a determination made if the action will affect any listed species or their critical habitat. If it is determined by the Federal agency, with the written concurrence of the Service, that the action is not likely to adversely affect listed species or critical habitat, the consultation process is complete, and no further action is necessary.

Formal consultation (50 CFR 402.14) is required if the Federal agency determines that an action is "likely to adversely affect" a listed species or will result in jeopardy or adverse modification of critical habitat (50 CFR 402.02). Federal agencies should also confer with the Service on any action which is likely to jeopardize the continued existence of any proposed species or result in the destruction or adverse modification of proposed critical habitat (50 CFR 402.10). A written request for formal consultation or conference should be submitted to the Service with a completed biological assessment and any other relevant information (50 CFR 402.12).

Candidate species have no legal protection under the Endangered Species Act (ESA). Candidate species are those species for which we have on file sufficient information to support issuance of a proposed rule to list under the ESA. Identification of candidate species can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and, thereby, possibly remove the need to list species as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate conservation measures to alleviate threats to this species.

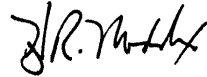
Your attention is also directed to section 7(d) of the ESA, as amended, which underscores the requirement that the Federal agency or the applicant shall not make any irreversible or irretrievable commitment of resources during the consultation period which, in effect, would deny the formulation or implementation of reasonable and prudent alternatives regarding their actions on any endangered or threatened species.

Please note that the peregrine falcon which occurs in all counties of Utah, and occurs in Coal Creek Canyon, was removed from the federal list of endangered and threatened species per Final Rule of August 25, 1999 (64 FR 46542). Protection is still provided for this species under authority of the Migratory Bird Treaty Act which makes it unlawful to pursue, hunt, take, capture, or kill migratory birds, their parts, nests, or eggs (16 U.S.C. 703-712). When taking of raptors or other migratory birds is determined by the applicant to be the only alternative, application for federal and state permits must be made through the appropriate authorities. For take of raptors; nests occupied by eggs or nestlings; nests still essential to the survival of the juvenile bird; nestlings; or eggs, Migratory Bird Permits pursuant to 50 CFR parts 13 and 21 must be obtained through the Service's Migratory Bird Permit Office in Denver at (303) 236-8171.

We recommend use of the *Utah Field Office Guidelines for Raptor Protection from Human and Land Use Disturbances* which were developed in part to provide consistent application of raptor protection measures statewide and provide full compliance with environmental laws regarding raptor protection. Raptor surveys and mitigation measures are provided in the Raptor Guidelines as recommendations to ensure that proposed projects will avoid adverse impacts to raptors, including the peregrine falcon.

If we can be of further assistance or if you have any questions; please feel free to contact Tom Chart of our office at (801)975-3330 x144.

Sincerely,

A handwritten signature in black ink, appearing to read 'H.R. Maddux', written in a cursive style.

Henry R. Maddux
Utah Field Supervisor

cc: Ms. Sylvia Gillen, State Conservationist, NRCS, Salt Lake City, Utah
Mr. Thomas Sharp, SWCA, 200 South 257 East Suite 200, Salt Lake City, Utah 84111

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